

Notice of Allowability	Application No.		Applicant(s)	
	09/883,244		NIELSEN ET AL.	
	Examiner		Art Unit	
	Sue A. Purvis		1734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 30 October 2003.
2. ☒ The allowed claim(s) is/are 2-18, 25-27 and 30.
3. ☒ The drawings filed on 09 July 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| <ol style="list-style-type: none"> 1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. <u>10/30/2003</u> 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | <ol style="list-style-type: none"> 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. <u>11/25/2003</u> 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance 9 <input type="checkbox"/> Other |
|---|---|

Sue A. Purvis
Examiner
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EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Ronald D. Faggetter on Tuesday, November 25, 2003.

The application has been amended as follows:

Cancel claims 31 through 34.

2. The following is an examiner's statement of reasons for allowance:

Regarding claims 30 and 2-18, the primary reason for allowance is the use of a vision system for "imaging" the products in combination with a processor for determining a transverse position of the product and sending an activation signal to the fixed labeler closest to the determined position. "Imaging" amounts to the action of producing an image and that image being based on the position of the products. A reference of interest to the examiner is Elharrar et al. (FR 2,719,283). Elharrar discloses an automatic product labeling for fruit and vegetables. The items to be labeled are carried in containers with bar codes (16) thereon. The bar code contains the information about the items to be labeled and that information is transferred to a processor (14) by means of a bar code reader (15). Information such as the height that the labelers (9, 10, 11) need to be and which labelers need to be activated are determined based on

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that bar code information. However, there is no reason or suggestion for using a vision system to create an "image" of the products as required by the applicant's claims. The vision system used by the applicant allows the apparatus to produce an "image" of the products in various arrangements and to activate the labelers accordingly.

Regarding claims 25-27, the reasons for allowance are detailed in the Office Action dated April 8, 2003. In particular, claim 25 is allowable because prior art fails to show a product labeling apparatus where a bellows includes an air diffuser and air blocking member as defined in claim 25. Eberle (US Patent No. 4,784,380) discloses a pickup device (11) including a bellows (25) with an air diffuser, which includes a central orifice (12) and side openings (46, 46a) and a blocking member (37). (See Figures 7A-7C; Col. 8, lines 13-28.) The side openings in applicant's claim face a side of the bellows as shown in Figures 7 and 7A. There is no reason or suggestion for modifying the openings in Eberle. Another reference of interest is Watkiss (US Patent No. 4,717,138) where as shown in Figure 3, the device includes an air diffuser with a side opening (42) which faces the bellows and a central opening including a rod (54). The rod (54), however, does not amount to a blocking member as required by claim 25, because the rod (54) includes grooves (55) which act as venting passages ways. There is no reason or suggestion for using "an air blocking member" in Watkiss.

3. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Amendment

4. The amendment to the claims filed on 30 October 2003 does not comply with the requirements of 37 CFR 1.121(c) because used "previously amended" instead of --previously presented--. Amendments to the claims filed on or after July 30, 2003 must comply with 37 CFR 1.121(c) which states:

(c) *Claims.* Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered).

(1) *Claim listing.* All of the claims presented in a claim listing shall be presented in ascending numerical order. Consecutive claims having the same status of "canceled" or "not entered" may be aggregated into one statement (e.g., Claims 1-5 (canceled)). The claim listing shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(2) *When claim text with markings is required.* All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of "currently amended," and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. Only claims having the status of "currently amended," or "withdrawn" if also being amended, shall include markings. If a withdrawn claim is currently amended, its status in the claim listing may be identified as "withdrawn—currently amended."

(3) *When claim text in clean version is required.* The text of all pending claims not being currently amended shall be presented in the claim listing in clean version, i.e., without any markings in the presentation of text. The presentation of a clean version of any claim having the status of "original," "withdrawn" or "previously presented" will constitute an assertion that it has not been changed relative to the immediate prior version, except to omit markings that may have been present in the immediate prior version of the claims of the status of "withdrawn" or "previously presented." Any claim added by amendment must be indicated with the status of "new" and presented in clean version, i.e., without any underlining.

(4) *When claim text shall not be presented; canceling a claim.*

(i) No claim text shall be presented for any claim in the claim listing with the status of "canceled" or "not entered."

(ii) Cancellation of a claim shall be effected by an instruction to cancel a particular claim number. Identifying the status of a claim in the claim listing as "canceled" will constitute an instruction to cancel the claim.

(5) *Reinstatement of previously canceled claim.* A claim which was previously canceled may be reinstated only by adding the claim as a "new" claim with a new claim number.

Instead of having the amendment entered, the applicant has agreed to allow the examiner to make the changes by Examiner's amendment (presented above).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Klinger (US Patent No. 4,324,608) discloses a labeling apparatus where a belt (14) transfers labels (26) to containers (60, 62, 64) which are transported on conveyor belt (58) to the container positions. Bernard et al. (US Patent No. 5,387,302) discloses using multiple labeling heads which move both in the X and Y direction to label items carried on a tray. The system is set up to label the items in their trays using the various labeling heads. Harte (US Patent No. 6,543,505 B1) discloses an empty package detector for a labeling apparatus where sensors alert the labeling machine so that missing or empty packages are not accidentally labeled. Goetz (US Patent Application Publication No. 2003/0173034 A1) discloses a flow control element which is of interest.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Purvis whose telephone number is (703) 305-0507. After December 20th, 2003, the examiner can be reached at (571) 272-1236. The examiner can normally be reached on Monday through Friday 8am to 5pm.

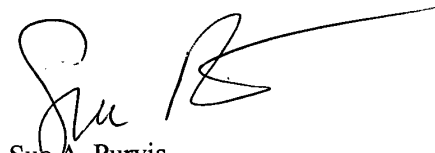
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rick Crispino can be reached on (703) 308-3853. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-1495.

A handwritten signature in black ink, appearing to read 'Sue A. Purvis', with a long horizontal line extending to the right.

Sue A. Purvis
Examiner
Art Unit 1734

sp
November 25, 2003